No. 3100

United States
Circuit Court of Appeals
For the Ninth Circuit

CELIA DIAMOND and WILLIAM DIAMOND and BRIDGET McGRAIL and JOHN McGRAIL,

Appellants,

vs.

LAWRENCE F. CONNOLLY, administrator of the estate of JOHN CORBETT, deceased, and LAWRENCE F. CONNOLLY, individually, JOHN J. CONNOLLY and JOHN E. McBURNEY,

Appellees.

BRIEF OF APPELLEES LAWRENCE F. CONNOLLY, administrator and individually, and JOHN J. CONNOLLY.

C. W. BEALE, Solicitor for Lawrence F. Connolly, administrator and individually, and John J. Connolly, Appellees.

Upon Appeal from the District Court of the United States, District of Idaho, Northern Division.

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STATEMENT OF THE CASE.

The statement of the case as found in the decision of the learned Judge of the District Court (Record pages 57 to 73 inclusive), is so complete and fair to appellants as to make further reference to the allegations of the bill unnecessary from the standpoint of the appellees, except as it may become ad-

visable to direct the attention of the Judges of this Honorable Court to certain of such allegations in the argumentative part of their brief.

ARGUMENT.

The motion of appellees, Lawrence F. and John J. Connolly, for a dismissal of the suit and bill of complaint of appellants will be found in the Record on pages 43 to 49 inclusive.

Industrious research has not disclosed a case where the alleged facts are so devoid of equity and so antagonistic to the repeated declarations of the Supreme Court of the United States expressing such Court's disapproval of endless litigation as the allegations of the bill in the case at bar. That these appellees have been forced to appear in numerous suits instituted in different jurisdictions involving a decree of distribution made and entered on the 23rd day of August, 1909, in the estate of John Corbett, deceased, which decree, by the express provision of the Statute of Idaho, became absolute, final and conclusive within sixty days after the date thereof as to the rights of the distributees therein mentioned, and as to all heirs and claimants of such estate, and that this suit was brought to harass appellees, are facts emphatically established by the allegations of the bill.

In this connection there is submitted the following language from the decision of Judge Dietrich:

> "Three times already the defendant, Lawrence F. Connolly has been drawn into court upon a similar charge of fraud, once in this Court (the case being unreported), and twice in the State courts, as appears from Connolly v. Reed, 22 Idaho, 29, and Connolly v. Probate Court, 25 Idaho, 35." Record page 59.
>
> "Possibly rights of innocent parties have not grown up, but it may very well be that the defendant, Lawrence

> F. Connolly, has for some time acted upon the assumption that, after being drawn into court three times touching the probity of his conduct and the propriety of his claim to be one of the heirs of the deceased, he would be exempt from further harassment." Record page 73.

During this prolonged litigation in four different courts, as attorney for Connolly brothers and their sister Mrs. Udell, it became necessary for the author of this brief to appear in their behalf and submit arguments on twelve different occasions, and during such arguments he has been opposed by eight different attorneys.

In the absence of actual experience it is difficult to believe in the possibility of such endless litigation. Again and again have appellees been called upon to defend themselves against the same meritless charge of fraud, from which in every instance they have been finally exonerated.

The fraud attempted to be charged in the present bill is set forth in Paragraph XIX thereof (Record page 12), and is based upon the statement that appellee Lawrence F. Connolly, as the administrator of the estate of John Corbett, deceased, filed a petition in the Probate Court of Kootenai County, Idaho, asking for a decree of distribution of said estate, wherein he falsely represented to the Court that he and his brothers and sister were heirs at law of such deceased, and that such representations were made by him with the knowledge and assent of his brothers and sister, with intent to deceive the Probate Court and to defraud these appellants, and that is all there is upon which to base this suit. That such alleged representations, knowledge and intent do not constitute fraud or a foundation for a suit in equity has been repeatedly held by the Courts.

In support thereof let the decisions of the Courts speak for themselves:

In Connolly v. Reed, 22 Idaho, 29, on page 40 the Supreme Court of Idaho used this language:

> "It is argued, however, that Bridget Madden alleged fraud on the part of the Connollys in not reporting to the probate court that she was the only surviving heir to the estate and in not advising her of the fact that her brother, John Corbett, was dead, and that he had left an estate which she was entitled to inherit. It may be conceded that the allegations of the petition are true in this respect, and still that admission would not help the case of Bridget Madden. It is not charged that the Connollys through any fraud or otherwise kept her from appearing and asserting her right or that they made any misrepresentations or that they deceived her or misrepresented facts to her."

And later in the case of Connolly v. Probate Court, 25 Idaho, 35, on pages 46 and 47, the Supreme Court of Idaho had this to say with reference to similar allegations of fraud:

> "There is no question but that the proper notices were given in the administration of said estate and that all the world was notified of the proceedings in said matter, and that Bridget Madden made no appearance in said matter whatever, and did not bring these proceedings until more than two years after the decree of distribution had been made and entered by said probate court.
>
> "It is contended by counsel for defendant that under the allegations of the petition of the state of Idaho, fraud and fraudulent proceedings were charged against Connolly in procuring said order and decree of distribution to be entered by the probate court, and that when said fraudulent proceedings were called to the attention of the probate court, it was the absolute duty of that court to review the matter, and if it concluded that said judgment was fraudulently obtained, to set it aside.

"The allegations of the attorney general in the petition of the state in regard to the fraud practiced by the Connollys are quite similar to the allegations of fraud set up in the petition which the court had under consideration in the case of Connolly v. Reed, supra, and the allegations in that petition and the amended petition in that case this court held did not constitute fraud, and we do not think the allegations of the petitions of the attorney general charge fraud on the part of the Connollys, since it nowhere appears that through fraud or otherwise the defendants, the Connollys, kept Bridget Madden from appearing and asserting her rights, as it is not alleged that they made any misrepresentations or deceived her as to the facts of the case."

The following language of the decision herein is quoted as it covers the matter in intelligent detail:

"But the statutory proceeding for the distribution of an estate is in the nature of a suit *in rem*, and when taken in compliance with the law the decree, upon becoming final, is deemed to be binding upon all the world. Connolly v. Reed, and Connolly v. Probate Court, supra. There is here no charge of irregularity of procedure, and, therefore, it will be presumed that due notice was given and that generally the law was complied with. It follows that, unless nullified by fraud, the decree foreclosed the claims of all parties, including those of the plaintiffs here. So much, as I understand, the plaintiffs concede, but they say the decree was procured through fraud. What are the facts disclosed by the pleading in this respect, and can the decree be assailed on account thereof? The averments are, that, with the knowledge and assent of his brothers and sister, the defendant, Lawrence F. Connolly, with the intent to deceive the Court and to defraud the plaintiffs, falsely represented in his petition for distribution that he and his co-distributees were the heirs of the deceased, and that the Court acted upon such representations. There is further statement to the effect that the distributees did not advise Corbett's relatives of his death until about a year after the decree of distribution was made. Such is the extent of the

charge of fraud both in scope and in detail. There is no averment that Connolly either represented in the petition or testified before the Court that the deceased left no relatives other than the distributees, or that he made any false statement or concealed any fact touching the existence of the plaintiffs or their relationship to the deceased. The falsity, if any there was, consisted of the claim or representation that the Connollys were the only heirs—not even that they were next of kin of the deceased. A claim or representation of heirship manifestly involves mixed questions of law and fact. The verity of this statement is most strikingly exemplified upon the face of the bill. Bridget Madden repeatedly claimed and pleaded that she was the only heir, and yet the Supreme Court of the State denied her claim, and the plaintiffs now assert that she was not entitled to inherit. Is she, therefore, to be charged with fraud because she repeatedly came into the courts and represented that she was the heir? As the bill further discloses, the plaintiffs repeatedly took legal advice, and until recently were informed that they were not heirs. They have now come into Court asserting a right to inherit, but should the courts hold against them, would they be chargeable with an attempt to deceive? The illustrations are to the point that a party cannot be subjected to a charge of actionable fraud because in his pleading he may make a claim involving doubtful questions of mixed law and fact. It is true that the plaintiffs further aver that this representation was made by Connolly with the intent to deceive the Court and to defraud the plaintiffs, but in the absence of averments of specific facts from which an inference of a wicked intent may be properly drawn, this language must be held to mean nothing more than that the claim was made with the intent on the part of Connolly to induce the Court to distribute the estate to him and his sister and brothers. There is no charge that he misrepresented any material fact to the Court or wilfully withheld any information, or resorted to any trick or device ,or did anything or left anything undone which it was his duty to do, for the purpose of preventing the plaintiffs from having their day in Court or fully and

> fairly presenting their claims for adjudication. It is very plain from the diversity of advice given, and from the decisions of the Courts as set forth and explained in the bill, that if all the facts of kinship here exhibited by the bill had been before it, the Probate Court might, with much show of reason, have entered the decree now complained of. Under such conditions we ought not to consider as sufficient, and to entertain for any purpose, a charge of fraud so general and so barren of circumstantial detail." Record pages 59 to 62 inclusive.

The allegations in the bill that the appellee Lawrence F. Connolly in his petition filed in the Probate Court for the distribution of the Corbett estate falsely represented that he and his brothers and sister were the heirs of the said deceased, and that such representations were made by him with the intent to deceive the court and to defraud the appellants do not constitute fraud, or deceit, or a case for equitable interposition, and such allegations are conclusively insufficient herein when it is remembered that the Supreme Court of Idaho, in Connolly v. Probate Court, supra, referred to in appellants' bill, in passing upon this very petition for distribution held that the Connollys and their sister Mrs. Udell were cousins and heirs of Corbett and entitled to have distributed to them the Corbett estate. And the insufficiency of such allegations to entitle appellants to any relief is supported by the decision of the Supreme Court of the United States in Van Weel v. Winston, 115 U. S. 228, where that court in referring to a bill that had been dismissed by the decree of the Circuit Court used this significant language, found on pages 237 and 238 thereof:

> "It is full of the words fraudulent and corrupt, and general charges of conspiracy and violation of trust obligations. Mere words, in and of themselves, and even as qualifying adjectives of more specific charges, are not

> sufficient grounds of equity jurisdiction, unless the transactions to which they refer are such as in their essential nature constitute a fraud or a breach of trust, for which a court of chancery can give relief."

The Circuit Court of Appeals of the Eighth Circuit, in Williamson v. Beardsley, 137 Fed. 467, in affirming the judgment of the lower court where the bill was dismissed on the grounds of limitation and laches and where fraudulent conduct on the part of an executor of an estate was alleged, on page 469 had this to say:

> "To escape the bar of the statute, or rather to evade the application of the equitable doctrine of laches, the appellants averred in their bills of complaint that the executor acted fraudulently, and also that they had no notice or knowledge of the orders of the state court or of the fraudulent acts of the executor resulting in the sale and conveyance of the property until within a few months of the institution of their suits. They now contend that those averments made their bills of complaint secure from the attack of the demurrers.
>
> "There was, however, an entire absence of averment of substantive facts justifying the charge of fraud; and in such a case the mere use, by the pleader, of the terms 'fraudulent' and 'fraudulently' signifies nothing."

If the Connollys in claiming to be heirs of John Corbett, deceased, committed any fraud, then the mother of appellants, in setting up her claim as an heir of the deceased, in which she was aided and encouraged by them, was also guilty of fraud, and thus we have aiders and abettors of their mother's fraud in a court of equity appealing to the conscience of the Chancellor.

After experimenting in the courts with the mother on two occasions and with the attorney general of the State of Idaho

on another occasion, at this late date they are attempting to experiment in the courts on their own behalf.

In their claim to be the heirs of John Corbett, deceased, the Connolly brothers and their sister, Mrs. Udell, committed no fraud and made no false claim. They *were* heirs of the deceased under the laws of the State of Idaho and as such heirs were held by the decision of the Supreme Court of Idaho to be entitled to the estate of the decedent.

The Supreme Court of the State of Idaho, in Connolly v. Probate Court, supra, on pages 51 and 52, after referring to Sections 5700, 5701 and 5702 of the Revised Codes of Idaho, devoted to the subject of succession, had this to say upon the matter of the heirship of the Connollys and their sister and their right to succeed to the estate of John Corbett, deceased:

> "It is clear from the provisions of those subdivisions that the Connollys and Ellen Udell, being first cousins of Corbett and resident citizens of the United States, were heirs of said deceased and could succeed to his property provided there were no other parties who were entitled to succeed thereto by reason of closer relationship or kinship; and even if there be another heir of closer kinship and he failed to make claim thereto as provided by law, those next in order of succession may come in and inherit the property."

Appellees are not charged with any extrinsic fraud or misconduct. Whatever they did towards securing the distribution of the estate became a matter of record in the Probate Court, open at all times to the inspection and investigation of the appellants who were legally bound to make such inspection and investigation.

Judge Dietrich in his decision has so lucidly and convincing-

ly discussed this matter as to invite a quotation of the same herein:

> "It must be borne in mind that there is no suggestion of extrinsic fraud, that is, conduct upon the part of the defendants intended to deceive the plaintiffs or to prevent them from having a fair hearing upon their claims in the Probate Court. Such notice of the hearing as the law of the State requires was given, and Connolly made no false or other representation to the plaintiffs. He did nothing to prevent them from presenting their claim or having it considered, nor did he fail in the discharge of any duty which he owed them. The full extent of his wrongdoing, if any there was, consisted of making a contention in open court that he and his brothers and sister were the heirs. Suppose he had gone further and upon the hearing had falsely testified that the deceased left no other relatives at all,—at most we would have a case of intrinsic fraud. And, indeed, that only intrinsic fraud is intended to be charged in the bill is, as I understand, admitted by counsel for the plaintiffs." Record page 62.

In Stead v. Curtis, 191, Fed. 529; s. c. 205 Fed. 439, it was held by this Honorable Court that a court of equity would not set aside the decree of distribution on the ground of intrinsic fraud.

Mr. Justice Miller in United States v. Throckmorton, 98 U. S. 61, a case that has become a classic in American Jurisprudence on pages 68 and 69 used this significant and conclusive language:

> "That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases."

> "To overrule the demurrer to this bill would be to retry, twenty years after the decision of these tribunals, the very matter which they tried, on the ground of fraud in the document on which the decree was made. If we can do this now, some other court may be called on twenty years hence to retry the same matter on another allegation of fraudulent combination in this suit to defeat the ends of justice; and so the number of suits would be without limit and the litigation endless about the single question of the validity of this document."

In Paragraph XXX of the bill, (Record, pages 18 and 19), it is alleged by appellants:

That on the 14th day of March, 1912, proceedings on behalf of said Bridget Madden were instituted in the United States Circuit Court of Idaho, with the object of securing to her the estate of the said John Corbett, deceased:

That on the 28th day of May, 1912, proceedings were instituted in the Probate Court of Kootenai County, Idaho, on behalf of the said Bridget Madden, with the ultimate object of establishing her right to succeed to the estate of the said John Corbett, deceased, which proceedings were determined against her by the Supreme Court of Idaho:

That after said determination by the Supreme Court of Idaho, proceedings were instituted in the District Court of Idaho, in the County of Kootenai, by the Attorney General of the State, and Elder & Elder, then looking after the interests of Bridget Madden, which proceedings were finally determined by the Supreme Court of Idaho adversely to the interests of said Bridget Madden, the mother of the appellants.

And it is further alleged in appellants' bill, in Paragraph XXXV thereof (Record page 21), in reference to such proceedings as follows:

"That pending the litigation and efforts made in behalf of their mother, Bridget Madden, to secure the estate of said John Corbett, deceased, these plaintiffs took great interest therein and did all in their power to further the interest of their mother."

Inasmuch as appellants, who, in the month of May, 1910, had knowledge of the death of John Corbett, deceased, (Record page 16), were not only familiar with these numerous proceedings brought to set aside the decree of distribution of the Corbett estate, but also took great interest and did all in their power in such proceedings, there is emphasized herein that *endless litigation and mischievous retrial of a case*, upon which the Court, in United States v. Throckmorton, supra, placed the indelible stamp of disapproval.

In applying the well established rule of the Supreme Court to this endless chain of litigation, Judge Dietrich said:

> "For if we can in this action disregard the probate judgment and divest the distributees of their title, and pass the property to the plaintiffs, another court of equity may, next year, upon representations that our decree was procured by false pleadings and perjured testimony, re-examine the issues, and, if satisfied that false statements were made, take the property from the plaintiffs and return it to the distributees, and so on indefinitely, and we should have the very evil which the rule of the Throckmorton case is designed to prevent." Record page 64.

The Supreme Court of Idaho, first, in Connolly v. Reed, supra, and again, in Connolly v. Probate Court, supra, issued a peremptory writ of prohibition prohibiting the Probate Court of Kootenai County from taking any action or proceeding in the matter of the distribution of the estate of John Corbett, deceased, to the Connolly brothers and their sister,

Mrs. Udell, under the said decree of distribution, or from in any manner interfering with their ownership, control or possession of said property. In each of these cases there were presented similar allegations of fraud such as found herein. In both cases the Supreme Court of Idaho held that no fraud had been committed. In each of these cases the appellants took great interest and did all in their power to have the Probate Court of Kootenai County do the very things which the Supreme Court twice prohibited it from doing, and did all in their power to have the Probate Court set aside the decree of distribution and to have the property of the estate so redistributed as to pass to their mother, Bridget Madden, directly and to themselves indirectly. As her daughters they were interested in the result of and familiar with her litigation and should be bound thereby. Having failed in their former endeavors through their mother to secure a cancellation of the decree of distribution and a surrender of the property of the estate already distributed to the Connolly brothers and their sister, they again appear in court on the same meritless charge of fraud, accompanied by the further allegations in their bill as to the great interest they took in the three former suits brought either by their mother or in her interest, which they did all in their power to win, and where the records in such suits show that the acts complained of therein are the same acts complained of herein. Courts of equity do not permit this class of experimental litigation, nor do they countenance therein pretentious claims of mistake or ignorance.

It appears from the bill that appellants learned of the death of John Corbett, deceased, as early as May, 1910, and that

the first suit commenced by their mother, in which they did all in their power to further her interest, was instituted in the United States Circuit Court of Idaho on the 14th day of March, 1912. Having, according to their own averments, taken great interest in such suit and the subsequent proceedings involving the distribution of the Corbett estate, where the records in such proceedings allege the same fraudulent conduct on the part of the appellee Lawrence F. Connolly, as set forth in the bill herein, appellants cannot plead ignorance as to the facts disclosed by such records and by the decisions of the Supreme Court of Idaho in Connolly v. Reed and Connolly v. Probate Court, supra, referred to in their bill. Judge Dietrich characterized their conduct in such litigation in the following apt language:

> "As has already been stated, the plaintiffs allege that they took a deep interest in the other suits, and, if they did not render assistance, it is to be inferred that at least they gave encouragement thereto, and the Court should not be astute to find a way by which they can now be heard in their own right to assert a fraud which their mother, under their encouragement and possibly with their aid, repeatedly but unsuccessfully asserted." Record page 73.

It is not pretended that proper and legal notices were not given in the administration of the Corbett estate, or that the administrator deceived the appellants, made any false or any statement or representation to them, or hindered or delayed them in any manner from asserting every claim they might have had to such estate.

Furthermore, all the acts complained of were matters of record and subject to the inspection and investigation of appellants and their attorneys. Appellants not only had the

means of knowledge but the actual knowledge as to the alleged false representations in the petition of the administrator, and as to the decree of distribution and the distribution of the Corbett estate. Whether they had such knowledge or not, they had the means of knowledge, which in law is the same thing, and such is the rule as laid down in Wood v. Carpenter, 101 U. S. 135, a decision which has stood the test of all courts since its rendition in 1879. The following language from that case is especially applicable to the allegations and contentions in the bill herein.

On page 140 thereof it is said:

> "A general allegation of ignorance at one time and of knowledge at another are of no effect."

And on page 143:

> "Concealment by mere silence is not enough. There must be some trick or contrivance intended to exclude suspicion and prevent inquiry.
>
> "There must be reasonable diligence; and the means of knowledge are the same thing in effect as knowledge itself."

EVERY CLAIM OF THE APPELLANTS SET FORTH IN THEIR BILL AND EVERY CAUSE OF ACTION THEREIN CONTAINED ARE BARRED BY THE STATUTES OF LIMITATIONS.

I.

DECREE OF DISTRIBUTION FINAL AND CONCLUSIVE.

Sec. 5627, Idaho Revised Codes is as follows: "In the order or decree the court must name the persons and the proportions or parts to which each shall be entitled, and such persons may demand, and sue for and recover their respective shares from the executor or administrator, or any person having the same

in possession. Such order or decree is conclusive as to the rights of heirs, legatees or devisees, subject only to be reversed, set aside, or modified on appeal."

Interpreting this section and referring to the failure of Bridget Madden, the mother of appellants to assert her claim as an heir to the estate of John Corbett, deceased, within the time allowed by law, the Supreme Court of Idaho, in Connolly v. Probate Court, supra, commencing on page 45, had this to say:

> "Said probate court having had jurisdiction of the probating of said estate with the power to determine who were the heirs of said Corbett, deceased, and who were entitled to succeed to his estate, and what their respective interests were, and having determined these matters, and having entered its decree of distribution therein, and the decree not having been appealed from within the time provided by law for an appeal, the decree becomes conclusive as to the rights of all heirs and claimants to said estate.
>
> "In Miller v. Mitcham, 21 Ida. 741, 123 Pac. 941, this court, after citing certain decisions sustaining that proposition, said:
>
> " 'The foregoing authorities clearly and fully establish the proposition that the probate courts have exclusive, original jurisdiction in the settlement of estates of deceased persons, and it is within the jurisdiction of those courts to determine who are the heirs of a deceased person and who is entitled to succeed to the estate and their respective shares and interests therein. The decrees of probate courts are conclusive in such matters.'
>
> "Since the decrees of probate courts are conclusive in such matters, unless reversed on appeal, the state of Idaho, on the relation of its attorney general, cannot have such decree set aside in the interest of a foreign and non resident heir. As fully supporting this rule, see William Hill Co. v. Lawler, 116 Cal. 359, 68 Am. St. 27, 48 Pac. 323. The supreme court of California in that

case, after stating that the proceeding for the distribution of an estate is in the nature of a proceeding *in rem*, which is in the hands of an administrator or executor for distribution, says:

" 'By giving the notice directed by the statute, the entire world is called before the court, and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate; and every person who may assert any right or interest therein is required to present his claim to the court for its determination. Whether he appear and present his claim or fail to appear, the action of the court is equally conclusive upon him, 'subject only to be reversed, set aside or modified on appeal.' The decree is as binding upon him if he fail to appear and present his claim as if his claim after presentation had been disallowed by the court.'

"In Goodrich v. Ferris, 214 U. S. 71, 29 Sup. Ct. 580, 53 L. ed. 914, in which case the court approved the decision of the supreme court of California in the last cited case, the court says:

" 'It is elementary that probate proceeding by which jurisdiction of a probate court is asserted over the estate of a decedent for the purpose of administering the same is in the nature of a proceeding *in rem*, and is therefore one as to which all the world is charged with notice.'

"The same doctrine is affirmed in Cunha v. Hughes, 122 Cal. 111, 54 Pac. 535; Williams v. Marx, 124 Cal. 22, 56, Pac. 603; Mulcahey v. Dow, 131 Cal. 73, 63 Pac. 158; State v. O'Day, 41 Or. 495, 69 Pac. 542. In Clark v. Rossier, 10 Ida. 349, 78 Pac. 358, 3 Ann. Cas. 231, this court held to the same doctrine."

In Stead v. Curtis, supra, this Honorable Court adopted with approval the following language from the decision of Mr. Justice Moody in Tilt v. Kelsey, 207 U. S. 43, found on pages 55 and 56:

"When the owners of property die, that property, under the conditions and restrictions of the law applicable, is transmitted to their successors named by their wills

or by the laws regulating inheritance in cases of intestacy. For a suitable time it is essential that the property should remain under the control of the state, until all just charges against it can be discovered and paid, and those entitled to it as new owners can be ascertained. It is in the public interest that the property should come under the control of the new owners, after such delays only as will afford opportunity for investigation and hearing to guard against mistake, injustice, or fraud. It is the duty of the sovereign to provide a tribunal, under whose direction the just demands against the estate may be determined and paid, the succession decreed, and the estate devolved to those who are found to be entitled to it. Sometimes this duty is performed by conferring jurisdiction upon a single court and sometimes by dividing the jurisdiction among two or three courts. The courts may be termed ecclesiastical, probate, orphans', surrogate or equity courts. The jurisdiction may be exercised exclusively in one, or divided among two or more, as the sovereign shall determine. But somewhere the power must exist to decide finally as against the world all questions which arise in the settlement of the succession. Mistakes may occur and sometimes do occur, but it is better that they should be endured than that, in a vain search for infallibility, questions shall remain open indefinitely. As was said by Mr. Justice Bradley, speaking on this subject in Broderick's Will, 21 Wall. 503, p. 519: 'The world must move on, and those who claim an interest in persons and things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings *in rem*."

In Tilt v. Kelsey, supra, the Supreme Court of the United States sanctioned and approved the right of a State to declare as the State of Idaho did in Section 5627, Idaho Revised Codes, that decrees of distribution shall be conclusive as to the rights of all heirs unless such decrees are reversed, set aside or modified on appeal, in the following language on page 56 of such decision:

"It is therefore within the power of the soverign to give to its courts the authority, while settling the succession of estates in their possession through their officers, the executors or administrators, to determine finally as against the world all questions which arise therein. Grignon v. Astor, 2 How. 319, per Baldwin, J., p. 338; Beauregard v. New Orleans, 18 How. 497; Foulke v. Zimmerman, 14 Wall. 113; Board of Public Works v. Columbia College, 17 Wall. 521; Broderick's Will, 21 Wall. 503; Simmons v. Saul, 138 U. S. 439; Byers v. McAuley, 149 U. S. 608; Goodrich v. Ferris, 145 Fed. Rep. 844; Loring v. Steinman, 1 Met. (Mass.) 204; Kellogg v. Johnson, 38 Connecticut, 269; State v. Blake, 69 Connecticut, 64; Exton v. Zule, 14 N. J. Eq. 501; Search v. Search, 27, N. J. Eq. 137; Harlow v. Harlow, 65 Maine, 448; Ladd v. Weiskoff, 62 Minnesota, 29.

"In respect to the settlement of the successions to property on death the States of the Union are soverign and may give to their judicial proceedings such conclusive effect, subject to the requirements of due process of law and to any other constitutional limitation which may be applicable."

The case of Goodrich v. Ferris, 214 U. S. 71, mentioned in Connolly v. Probate Court, supra, is the same case as Goodrich v. Ferris, 145 Fed. 844, wherein Circuit Judge Morrow held that a decree of distribution was conclusive and that a court of equity was without jurisdiction to interfere with the distribution of the estate. The facts therein alleged were more calculated to appeal to a court of equity than the facts herein and the ground for delay much more plausible, nevertheless the bill of complaint was dismissed.

II.

APPELLANTS ARE BARRED BY THEIR OWN LACHES AND THE STATUE OF LIMITATIONS OF IDAHO APPLYING TO ACTIONS INVOLVING FRAUD.

The statute of limitations in Idaho applying to actions involving fraud limits the right of recovery to a time within three years after the discovery of the facts constituting the fraud and is found in Subdivision 4 of Section 4054 of Idaho Revised Codes as follows:

> "Sec. 4054. Within three years:
> 4. An action for relief on the ground of fraud or mistake. The cause of action in such case not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

Statutes of limitation early received the approval of the Supreme Court of the United States. Their importance to society and protection in human affairs are well illustrated in the following quotation from Wood v. Carpenter, supra, found on page 139:

> "Statutes of limitation are vital to the welfare of society and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay, extending to the limit prescribed, is itself a conclusive bar."

After quoting from Connolly v. Probate Court, supra, wherein the Supreme Court of Idaho held that the decree of distribution was conclusive and that allegations substantially the same as those in the bill of complaint herein did not constitute fraud on the part of Lawrence F. Connolly, administrator, or his brothers and sister, Judge Deitrich most convincingly points out that independently of such holding the

appellants are barred from recovery and his reasoning, found on pages 67, 68 and 69 of the Record is unanswerable:

> "But if a different view were to be taken it would still be necessary to hold that the plaintiffs are barred from recovery by their own laches. As we have seen, Corbett died January 30, 1907. Letters of administration issued February 20, 1907. The decree of distribution was entered August 23, 1909. This suit was commenced March 29, 1917, or seven years and seven months after the distribution. If the suit had been brought in the State court plaintiffs' cause of action would have been subject to a local statute of limitations providing that 'an action for relief on the ground of fraud or mistake' must be brought within three years from the 'discovery by the aggrieved party of the facts constituting the fraud or mistake.' The plaintiffs admit that they learned of the death of Corbett at least as early as May, 1910, and thereupon consulted a lawyer touching the question of their heirship. They allege that on March 14, 1912, their mother instituted an action to establish her claim of heirship, and later commenced other proceedings to the same end, and that in all of such litigation they did 'all in their power to further the interest of their mother.' It must, therefore, be assumed that at least as early as March 14, 1912, more than five years before the commencement of this action, they had knowledge of Connolly's representations in the Probate Court, which they now charge to have been false and fraudulent. To overcome the presumption of laches, which they admit arises from the running of the period prescribed by the Idaho Statute, the only explanation they have to offer is that they repeatedly took legal advice in respect to their rights, and up to about the time the suit was commenced they were always informed that they were not the heirs of the deceased. But can such an excuse avail them here? In reason I think the better rule would be to regard the State Statute as absolutely binding in the premises. It is admittedly fair and reasonable, and it would tend to bring discredit upon the administration of the

> law, if, by reason of the mere accident of residence, as a consequence of which the plaintiffs are entitled to invoke the jurisdiction of this Court, they could recover in a case where citizens of the State, with like claims, would be debarred from recovering. The statute, it is to be observed, is not limited to actions at law, but applies equally to suits in equity."

In Pearsall v. Smith, 149 U. S. 231, the Supreme Court held that the case was a clear one in favor of the bar of the statute of limitations of New York and in affirming the decree of the Circuit Court, had this to say on page 233:

> "The Circuit Court held that this suit was one of the class provided for by the terms of Section 382, subdivision 5, and that, if the plaintiff would be barred of his relief in the state court by lapse of time, he would be barred in the federal court also, citing Burke v. Smith, 16 Wall. 390, 401; Clarke v. Boorman's Executors, 18 Wall. 493, 509; Wood v. Carpenter, 101 U. S. 135; 138; Kirby v. Railroad Co., 120 U. S. 130, 138."

In the case of Redd v. Brun, 157 Fed., 190, where the statute of limitations of the State of Colorado providing that bills for relief on the ground of fraud shall be filed within three years after the discovery by the aggrieved party of the facts constituting such fraud, the Circuit Court of Appeals of the Eighth Circuit, in affirming the decrees of the lower court, had this to say on pages 194 and 195:

> "The burden was upon him in this suit to show some sound reason why he did not make this search and inquiry in less than four years after the means of discovering the fraud were within his reach, and why a court of equity should refuse to apply its doctrine of laches until more than two years after the statutory limitation upon a like action had expired. He did not successfully bear this burden. He failed to establish any reasonable excuse for his postponement of his inquiry and search for more than four years after these deeds had been recorded. If

> by a failure to make the search and inquiry after the public record disclosed the means of discovery he could toll the limitation of the statute two years beyond the statutory time, it is not perceived why by a continued failure he might not toll it indefinitely; and as no equitable reason has been shown why the doctrine of laches should not be applied after the expiration of the limitation, the complainant has no standing in equity. He was guilty of laches which bars his suit, and the decrees below must be affirmed."

Judge Ross in the case of De Estrada v. San Felipe Land & Water Co., 46 Fed. 280, where laches and the statute of limitations were raised on demurrer, held that courts of equity are governed by the analogies of statutes of limitations ,and in referring to the delay of the plaintiff in not instituting her suit sooner for the protection of her alleged rights said: (Page 283)

> "Instead of enforcing she slept upon them for a period nearly three times as long as the statute of limitations prescribed by the state for the recovery of land in an action at law. Under such circumstances a court of equity will remain passive. An order will be entered sustaining the demurrer and dismissing the bill as amended, at complainant's cost."

Citation of cases almost without limit and beyond the patience of any court could be made showing that the bill of complaint of the appellants was properly dismissed, and appellees content themselves in this connection with the quotation of the following extract from the decision of Judge Deitrich, (Pages 72 and 73 of the Record):

> "No case has been drawn to my attention which, by reason of a close similarity of facts, tends to support the plaintiffs' contention, and upon the whole it must be held that they have failed to disclose any such unusual facts or extraordinary circumstances as would warrant

this Court in disregarding a fair and reasonable State statute and in thus enabling the plaintiffs to litigate a charge of fraud the facts involved in which they knew more than five years before they took any action."

IMAGINARY TRUST.

Appellants devote much space in their brief to an imaginary trust relationship between the appellee Lawrence F. Connolly, as administrator of the estate of John Corbett, deceased, and themselves, a relationship which never existed and which could not possibly have existed under the allegations of their bill, which do not show Lawrence F. Connolly in any capacity whatever, or John J. Connolly, so far as any rights of the appellants are involved, to be or to have been a trustee of an express or implied or involuntary trust, or trustee at all of the appellants.

> "Express trusts are those which are created by the direct and positive acts of the parties, by some writing, or deed, or will; or by words either expressly or impliedly evincing an intention to create a trust."
>
> 39 Cyc., page 24.
>
> Vol. III, Words & Phrases, page 2611.
>
> "Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent, or which are superinduced upon the transaction by operation of law as matters of equity, independently of the particular intention of the parties."
>
> 39 Cyc., page 25.
>
> Vol. III, Words & Phrases, page 2611.

Inasmuch as it is not alleged in the bill that appellants ever had any communication with any of the Connollys or their sister, Mrs. Udell, or that any of the Connollys or their sister, prior to or at the date of the decree of distribution, knew of the existence of the appellants, there is no express trust alleged in the bill and the matter of express trust is eliminated from this case.

Inasmuch as appellants never appeared before the Probate Court of Kootenai County, Idaho, the court which decreed the distribution of the estate of John Corbett, deceased, and never asserted in such probate court any claim as heirs of said deceased, and inasmuch as neither Lawrence F. Connolly, as administrator, or individually, nor John J. Connolly, in any capacity whatever, ever deceived appellants or made any statement or misrepresentation whatever to them or prevented them in any manner or degree from asserting any claim of heirship they might have had in and to said estate, and inasmuch as appellants could not sue Lawrence F. Connolly, as administrator, for any part of such estate, and the Probate Court could not force or compel such administrator, after the making and entry of the decree of distribution to turn over or deliver to said appellants or either of them any part of said estate; therefore, there never existed between appellants or either of them and Lawrence F. Connolly, as administrator, or individually or at all, or John J. Connolly in any capacity, any trust relationship whatever.

Surely, Lawrence F. Connolly as administrator of the Corbett estate could not hold the same in trust for these appellants if, under the laws of the State of Idaho, they could not recover from him as such administrator any part of such estate. One cannot be a trustee of another who does not have under his control some property for which the cestui que trust can maintain an action to recover the possession of the same, and there is no case cited in appellants' brief holding any trust relation between an administrator and an alleged heir where the law of the forum which governs the distribution of the estate has foreclosed the right of recovery by any heir who has not asserted any claim in the administering court or been provided for in

the decree of distribution. The law of Idaho specifically declares that the decree of distribution shall be conclusive upon all heirs unless reversed, set aside or modified on appeal, and that the heirs mentioned in the decree of distribution can sue for and recover their distributive shares from the administrator. Upon the decree of distribution becoming final any trust relation between the administrator and the heir mentioned in such decree ceases. Such administrator is no longer entitled to retain the possession of the property of the heir. The administrator's control and management of the property have ceased and a trust relation cannot exist beyond the time the trustee is legally entitled to the possession of the trust property.

By operation of the laws of Idaho any trust relation that might have existed upon the part of Lawrence F. Connolly, as administrator, ceased by virtue of the decree of distribution, dated the 23rd day of August, 1909, and which became final sixty days thereafter, and no other conclusion can be drawn from said Section 5627, Idaho Revised Codes, and the following language of the decision of the Supreme Court of Idaho interpreting the same, found on page 45 of Connolly v. Probate Court, supra:

> "Said probate court having had jurisdiction of the probating of said estate with the power to determine who were the heirs of said Corbett, deceased, and who were entitled to succeed to his estate, and what their respective interests were, and having determined these matters, and having entered its decree of distribution therein, and the decree not having been appealed from within the time provided by law for an appeal, the decree becomes conclusive as to the rights of all heirs and claimants to said estate."

But if it should be thought, notwithstanding the fact that

appellants never asserted in the Probate Court any claim as heirs of John Corbett, deceased, that technically there might be some implied trust relationship between Lawrence F. Connolly, as administrator, and these appellants, as alleged heirs up to the time of the entry of the decree of distribution, it must be admitted thereafter that Connolly's trusteeship ceased for the reason that the decree of distribution became conclusive and appellants could not recover from the administrator any part of the estate. Any cause of action they might have had against Lawrence F. Connolly as their trustee accrued prior to the entry of the decree of distribution and the statute of limitations commenced to run immediately upon the entry of such decree. The decree of distribution was a public record and was notice to appellants that the estate had been distributed to Lawrence F. Connolly and his brothers and sister. By pleading their familiarity with the death of John Corbett, as early as the month of May, 1910, and their acquaintance with and support of the litigation initiated in March, 1912, by their mother, Bridget Madden, which involved the decree of distribution and the alleged fraudulent conduct upon the part of Lawrence F. Connolly and his brothers and sister, they have eliminated themselves from any consideration on the claim made in their brief that the statutes of limitations do not apply to suits in equity or to trusts. As hereinbefore pointed out no express trust existed between appellants and any of the Connollys. Even if the suit presented a case of an express trust, the statute of limitations commenced to run upon the date of the decree of distribution, which was the 23rd day of August, 1909, since the decree became conclusive as to rights of heirs and ended the trust control of the administrator, and the property of the estate which had been under his control

theretofore immediately became the property of the distributees mentioned in the decree for which, under the laws of Idaho, they could maintain a suit for the recovery of the possession thereof from the administrator. In other words the trust relation then ended under the rule of decision in the case of Clark v. Boorman's Executors, 85 U. S. 493, in which the Supreme Court, in referring to an express trust and the application of the statutes of limitation to the acts and conduct of the trustees, on page 509, stated:

> "But when he has parted with all control over the property, and has closed up his relation to the trust, and no longer claims or exercises any authority under the trust, the principles which lie at the foundation of all statutes of limitation assert themselves in his favor, and time begins to cover his past transactions with her mantle of repose."

In Paragraph XXI of the bill (Record page 13) it is alleged that Lawrence F. Connolly, as administrator, distributed and delivered said estate to himself and John J. Connolly on the 28th day of June, 1912, and to William Connolly and Ellen Udell on the 3rd day of July, 1912, in the proportions mentioned in the decree of distribution. In other words, all the estate was actually distributed under the decree more than four years and eight months before the commencement of this suit. And by referring to the case of Connolly v. Probate Court, mentioned in appellants' bill, and to page 42 thereof, where the Supreme Court of Idaho said:

> "On August 13, 1912, the said probate court made an order and decree in said matter finally discharging and releasing said Lawrence F. Connolly as administrator of said estate, and releasing and discharging from all liability his sureties as such administrator."

it will be seen that Lawrence F. Connolly was discharged

as administrator of the estate and the sureties on his bond released and discharged from all liability more than four years and seven months before the commencement of this action and more than a year and seven months after the time had expired under the statute of limitations in which to commence any action on the ground of fraud, even though the bill herein had presented a case of an express trust, for instance, if Lawrence F. Connolly had been acting as the executor under a trust created by will. But, no express trust existing herein, the very most that can be contended for would be an implied trust relation which ended with the decree of distribution which provided for the distribution of all the Corbett estate to Lawrence F. Connolly and his two brothers and sister, Ellen Udell. From that time on he had no further trust connection with the property refered to in the decree and the statute then began to run, and if he had been guilty of any wrong doing, such wrong had been committed prior to the decree and had become a matter of public record.

The Court of Appeals of New York, in passing upon the question as to the time when the statute of limitations commences to run, in Lamar v. Stoddard, 9 N. E. 328, said:

> "He could, at most, have been declared a trustee *ex maleficio,* or by implication or construction of law; and in such a case the statute begins to run from the time the wrong was committed by which the party became chargeable as trustee by implication."

And again the Court of Appeals of New York in Gilmore v. Ham, 36 N. E. 826, on page 828, laid down the rule as to when the statute of limitations should run both with respect to express and implied trusts, in the following language:

> "In Lammer v. Stoddard, 103 N. Y. 672, 9 N. E. 328, we described the doctrine as applicable against a trustee of an actual, express, and subsisting trust, but held that

> where the trustee became such by implication or construction the statute ran from the date of the wrong which raised the implication. It may be added that even in the case of a direct trust the statute will begin to run when it ends, and the trustee has no longer a right to hold the fund or property as such, but is bound to pay it over, or transfer it discharged from the trust."

Since dictating the foregoing upon the proposition of the severance of all trust relationship on the part of Lawrence F. Connolly, as administrator, upon the entry of the decree of distribution, and the placing of this brief in the hands of the printer, there has been received by counsel for appellees a copy of the decision rendered in the case of Cardoner v. Day et al., filed January 25, 1918, a suit in which such counsel appeared as one of the solicitors for the defense, and wherein the question was raised as to the right of an administrator to purchase the estate upon which he had been administering from the heir subsequent to the date of the decree of distribution and prior to his discharge as such administrator, in which Judge Dietrich said:

> "But upon the entry of a decree of distribution the right of possession in the administrator terminates and his authority relative to the property ceases. Secs. 5626 and 5627. The property distributed is no longer a part of the estate entrusted to the care of the administrator. Touching it, both his rights and his obligations are at an end."

It cannot be contended that this is a case of a continuing trust on the part of Lawrence F. Connolly, as administrator, for the reason that the averments of the bill are to the effect that the decree of distribution was entered in August, 1909, and that the estate was actually distributed by the administrator in the months of June and July, 1912, and that it further

appears from the decision of the Supreme Court of the State of Idaho concluding the litigation in which appellants took such a vital interest, (the decision referred to in their bill of complaint) that Lawrence F. Connolly was discharged and his sureties released on the 13th day of August, 1912, by order and decree of the Probate Court.

Appellants cannot plead ignorance and want of knowledge as to these facts. They were all matters of public record, and furthermore, facts that had been investigated again and again by their attorneys. In addition to their allegations as to the interest which they took and the assistance which they extended to their mother in her protracted litigation, they aver in Paragraph XXXI of their bill (Record page 19) that on the 9th day of December, 1912, nearly four months after the entry of the decree discharging the administrator, and more than four years and three months prior to the commencement of this suit, they consulted one, Arthur Schmidt, an attorney and counsellor of Pittsburg, Pennsylavania, as to their rights in the estate of John Corbett, deceased, and in their behalf said Schmidt took the matter up with Elder & Elder, attorneys at law at Coeur d'Alene, Idaho, who were familiar with all the facts pertinent to the inquiry and who, they allege in Paragraph XXX of their bill, were the attorneys who represented their mother in her litigation.

It is well-nigh impossible to conceive of a case of more specific and detailed information and knowledge having been imparted to a cestui que trust concerning a severed trust relationship and an adverse claim of ownership and ownership and possession on the part of a trustee of property alleged to have been originally held in trust. And they will not be permitted to say after setting in motion these personal agencies for the

acquisition of knowledge and information that it was only just a short time before the commencement of their suit that they acquired knowledge as to the alleged fraudulent acts of the administrator, Lawrence F. Connolly, which alleged fraudulent acts he and his brothers and sister had repeatedly successfully combatted in the courts in litigation with which appellants were familiar and which had received their support.

As stated by the Supreme Court of the United States in Wood v. Carpenter, supra:

> "A general allegation of ignorance at one time and of knowledge at another are of no effect."

and that

> "There must be reasonable diligence; and the means of knowledge are the same thing in effect as knowledge itself."

And the following language from such decision is respectfully submitted as determining knowledge upon the part of appellants:

> "The fraud intended by the section which shall arrest the running of the statute must be one that is secret and concealed, and not one that is patent or known. Martin, Assignee, etc., v. Smith, 1 Dill. 85, and the authorities cited.
>
> " 'Whatever is notice enough to excite attention and put the party on his guard and call for inquiry, is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it.' Kennedy v. Greene, 3 Myl. & K. 722. 'The presumption is that if the party affected by any fraudulent transaction or management might, with ordinary care and attention, have seasonably detected it, he seasonably had actual knowledge of it.' Angell, Lim., sect. 187 and note."

In the case of Norris v. Haggin, 136 U. S. 386, which was

appealed to the Supreme Court from the Circuit Court of California, and in which an attempt was made, as in the case at bar, to show want of knowledge of the fraud until advised of the same by counsel a short time before the commencement of the suit, the Supreme Court in sustaining the decree of Judge Sawyer in dismissing the bill took occasion to say, on page 388:

> "The bill also alleges that these frauds did not come to his knowledge until a short time before the commencement of this suit, and then only through information derived from his counsel in the case."

And on page 392:

> "Even the principle of a court of equity, that time does not begin to run against a party on whom a fraud has been committed until that fraud has been discovered, can do the plaintiff no good in the present case. That he knew about the fraud, if there was one, in 1869, when he applied to Beatty, who refused to take his case; and that the facts out of which he was bound to know this fraud, if his bill be true, existed, were open, were patent, and could not fail to be discovered by any sort of inquiry or investigation, is so clear that there is no room for the doctrine of his having discovered these facts only a year or two before the suit was brought, or indeed after he had employed counsel.
>
> "It is a part of this general doctrine, that to avoid the lapse of time or statute of limitation, the fraud must have been one which was concealed from the plaintiff by the defendant, or which was of such a character as necessarily implied concealment. Neither of these principles can apply to the defendants in this case. The acts which constituted the fraud as alleged in the bill were open and public acts."

The following language of the Circuit Court of Appeals of the Eighth Circuit, in Williamson v. Beardsley, supra, found on page 470, is particularly fitting to this case:

"Discovery as employed in a statute or equitable rule of limitations and knowledge are not convertible terms, nor does the former mean the result of a resort at leisure to known sources of information. The possession of the means of knowledge is equivalent to knowledge itself. A party who has the opportunity of knowing the facts of which he complains cannot avail himself of his inactivity, and thus escape the imputation of laches. The grounds of attack against the validity of the orders of sale and the executor's deeds were matters of record. They had notice of the pendency of the administration proceedings sufficient to excite their attention and to put them on guard as to the course thereof. Under these circumstances they must be deemed to have had actual knowledge of what the records showed."

In Burke v. Smith, 83 U. S.390, on page 401, the Court said:

"Had their bill been framed to set aside the arrangement because of fraud, it must have been held to have been filed too late. The statute of limitations bars actions for fraud in Indiana after six years, and equity acts or refuses to act in analogy to the statute. Can a party evade the statute or escape in equity from the rule that the analogy of the statute will be followed by changing the form of his bill? We think not. We think a court of equity will not be moved to set aside a fraudulent transaction at the suit of one who has been quiescent during a period longer than that fixed by the statute of limitations, after he had knowledge of the fraud, or after he was put upon inquiry with the means of knowledge accessible to him."

It is a well established rule of the United States Supreme Court that courts of equity will apply the doctrine of laches and enforce the statutes of limitations in attempts to establish a trust, except where it appears, First,—That the trust is clearly established, and, Secondly,—That the facts have been

fraudulently and successfully concealed by the trustee from the knowledge of the cestui que trust, and such is the holding in the case of Badger v. Badger, 69 U. S. 87, 95, where the bill was dismissed, and the following language is quoted from that decision by reason of its particular applicability to the case at bar:

> "It is true there is a general allegation, that the 'fraudulent acts were unknown to complainant till within five years past,' while the statement of his case shows clearly that he must have known, or could have known, if he had chosen to inquire at any time in the last thirty years of his life, every fact alleged in his bill."

In the case of Percy v. Cockrill, 53 Fed. 872, where the court of appeals of the Eighth Circuit denied a similar contention that time is no bar in equity to a suit for relief from an actual fraud or constructive trust, had this to say on page 875:

> "One of the qualifications of this rule is that the facts constituting the fraud or trust must have been fraudulently and successfully concealed from the injured party. Badger v. Badger, 2 Wall. 87, 92. And notice of facts and circumstances which would put a man of ordinary intelligence and prudence on inquiry is, in the eye of the law, equivalent to knowledge of all the facts a reasonably diligent inquiry would disclose. 'Whatever is notice enough to excite attention, and put the party on his guard, and call for inquiry, is notice of everything to which such inquiry might have led. Where a person has sufficient information to lead him to a fact, he shall be deemed conversant with it.' "

And further, on page 876, emphasized the rule as to the application of the statute of limitations in the following language:

> "Generally courts of equity act, or refuse to act, in

> analogy to the statute, and they will not be moved to set aside a fraudulent transaction, or to enforce a constructive trust, at the suit of one who has been quiescent during a period longer than that fixed by the statute of limitations, after the complainant had knowledge of the fraud or trust, or after he was put upon inquiry, with the means of knowledge accessible to him."

And the same court made a similar ruling in Swift v. Smith, 79 Fed. 709, where there was involved a three year statute of limitations similar to that of Idaho against actions on account of fraud, and held that, inasmuch as all the facts on which the appellant relied for relief were spread upon the records of the probate court and the register of deeds which were open and ready for inspection, such records were notice to her of all the facts which they disclosed.

There is much irrelevant and unfounded statement in appellants' brief as to Lawrence F. Connolly, administrator, contracting or dealing with himself, and in an individual capacity securing a judgment against himself as an administrator. He did not in any capacity contract with himself or secure any judgment against himself and he did not purchase any property from the estate. The laws of Idaho permit an administrator to inherit property of the estate in which he is acting as such administrator as well as any other heir. The repeated assertions in appellants' brief to the effect that Lawrence F. Connolly and his brothers and sister were not heirs of Corbett, deceased, are incomprehensible, since, as hereinbefore shown, in the very decision of Connolly v. Probate Court, supra, referred to in the bill, the Supreme Court of Idaho specifically held that they were cousins and heirs of the deceased, and entitled to succeed to his estate, and issued a peremptory writ of prohibition prohibiting the Pro-

bate Court from interfering with the distribution of the Corbett estate to them. In that case a similar contention was made as in the case at bar. By the averments of their bill and their references therein to the decisions of the Idaho Supreme Court, appellants negative their continuous contention that the Connolly brothers and their sister were not heirs. Even if there had been a showing in this case that Lawrence F. Connolly, in the absence of being an heir, had fraudulently purchased from himself the property of the Corbett estate and the transfer to him had been confirmed by the Probate Court, the transaction would not be void and only voidable in a proper suit commenced within such a time as to avoid the bar of the statute of limitations. The decree of distribution is not a fraudulent judgment or a judgment in favor of Lawrence F. Connolly individually against himself as administrator. It has been held by the Supreme Court of Idaho to be a legal decree and to lawfully distribute the estate to the legal heirs of the deceased, distributees mentioned therein. Every act complained of became a matter of public record and was finished and concluded so as to leave the period of time between the completion thereof and the commencement of this suit, almost twice the length of that prescribed by the state statute of limitations on the ground of fraud.

The case of Bryan v. Kales, 134 U. S. 126, cited in appellants' brief is not in point and the facts therein alleged are entirely dissimilar to those herein. Mr. Justice Harlan in his decision specifically pointed out, in reply to the contention that the plaintiff was guilty of laches, that the action was not barred by the statute of limitations of Arizona and had been commenced within the time prescribed by the provisions of such statute.

Nor is Marshall v. Holmes, 141 U. S. 589, a case in point.

The cases cited in appellants' brief upon the proposition that federal courts would entertain jurisdiction to set aside judgments of the state courts do not support the contention of appellants herein and are not applicable to the facts appearing upon the face of the bill, as brief reference thereto will fully demonstrate.

In Barrow v. Hunton, 99 U. S. 80, the Supreme Court reversed the judgment of the Circuit Court for want of jurisdiction.

On page 35 of appellants' brief the Supreme Court of Idaho, in Connolly v. Probate Court, supra, is not accurately quoted. There was omitted a very important and qualifying prepositional phrase, to-wit: "without any laches or fault on his part," which should follow the word, "property." This phrase entirely destroys this decision as an authority for appellants' contention. And if the entire paragraph from which this language was taken had been quoted, the following words would have appeared:

> "There must be an end to the settlement and distribution of estates of decedents,—an end to such litigation."

Passing to Hale v. Coffin, 114 Fed. 567, it will be noted that the Circuit Court dismissed the bill of complaint and held that the claim set up therein was barred by the statute of limitations, citing and approving the rule laid down in Broderick's Will, supra.

In Byers v. McAuley, 149 U. S. 608, the Supreme Court reversed the decree of the Circuit Court and laid down the rule that possession of decedent's property by an administrator appointed by a state court is such a possession as cannot

be disturbed by any other court, and the court does not say, as quoted on page 36 of appellants' brief, that an heir may establish his right to a distributive share of an estate, but that the distributee may establish his right to his share in the estate.

The law of Idaho, as hereinbefore pointed out gives a distributee mentioned in a decree of distribution the right to sue the administrator for his distributive share of such estate.

In Arrowsmith v. Gleason, 129 U. S., 86, the facts were in no manner similar to those herein, and the question of the statute of limitations was not therein involved.

In Rhino v. Emery, 72 Fed. 382, the court specifically pointed out that the time limit provided in the statutes of limitations had not run, and the inference to be drawn from that decision is to the effect that if the action had been barred by the statute the demurrer would have been sustained.

No statement that counsel for appellees could make in this brief would so aply and conclusively emphasize the fact that the case of Patterson v. Dickinson, 193 Fed. 328 is not at all in point, as the language of Judge Gilbert found on page 333 thereof as follows:

> "The case differs essentially from Tracy v. Muir, 151 Cal. 365, 90 Pac. 832, 121 Am. St. Rep. 117, the Broderick Will Case, 21 Wall. 503, 22 L. Ed. 599, and other similar cases cited on behalf of the appellee, holding that the determination of the question of the genuineness of an instrument purporting to be a will is solely and exclusively for the court to which proof of wills is presented, and that its decision therein is final and conclusive, and not subject,except upon appeal to a higher court, to be questioned in any other court, or to be set aside or vacated by a court of chancery.

> "The superior court of Los Angeles county was not vested with jurisdiction primarily to decide whether the instrument which had been admitted to probate in Missouri as the will of Rachael E. Dickinson was what it purported to be. The determination of that question belonged exclusively to the Probate Court of the decedent's domicile. That court having finally adjudicated the question, and having decreed that the instrument was not the last will and testament of the decedent, and that she died intestate, its judgment must be held to be final and conclusive upon any ancillary administration. The will having been set aside by the only court which had jurisdiction to set it aside, the judgment so rendered is by law conclusive of the right of the distributee under the proceedings of the court of ancillary administration to retain the property obtained by virtue thereof."

The case of Johnson v. Waters, 111 U. S. 640, did not involve any statute of limitations and the relations of the parties and the facts were entirely different than in the case at bar. That decision is an authority against the appellants as will appear from the following language of the court therein found on page 669:

> "Had the question of fraud been before the Probate Court in any of these proceedings, and had the complainant been appraised of them, the case might have been different. This court would not try over again a case already tried, nor permit the compainant to litigate matters which he had notice of, and which he had an opportunity to litigate in the probate proceedings."

The issue with which court was dealing in the case of Simon v. Southern Railway Company, 236 U. S. 115, is so entirely foreign to the issue involved herein that the briefest reference thereto shows how entirely inapplicable that case is. The judgment had been secured without any notice to the judgment debtor and in violation of the due process clause of the Four-

teenth Amendment. There was no question as to limitation. The judgment was entered on the 20th of January, 1905, and suit was commenced on February 6, 1905, to enjoin the enforcement of the same.

Judge Dietrich in the case at bar and Judge Morrow in Goodrich v. Ferris, supra, have made it so plain and convincing that Sohler v. Sohler, 67 Pac. 282, cannot be treated as an authority herein that any extended discussion of the case would be imposing upon the patience of this Honorable Court.

Referring thereto Judge Dietrich, on pages 64 and 65 of the Record, had this to say:

> "Counsel cited, as tending to support the plaintiff's view, Sohler vs. Sohler (Cal.), 67 Pac. 282, 285. But that such is not the doctrine of the California courts even under a statute which would seem to strengthen, if it does not add to, the remedial rights of the aggrieved party, reference need only be made to such cases as Lynch vs. Rooney, 44 Pac. 565, and Mulcahey vs. Dow, 63 Pac. 158, where the conditions and contentions were very similar to those here presented, and the more recent case of Bacon vs. Bacon, 89 Pac. 317, where the Supreme Court of California sums up the doctrine prevailing in that State as follows:
>
> " 'Lynch vs. Rooney, 112 Cal. 282, 44 Pac. 565, was an attempt to review a decree of distribution and declare an involuntary trust, upon a showing that the decree was procured by false or mistaken testimony. The case is one of the class where the fraud or mistake is intrinsic. In such cases no relief can be given. Pico vs. Cohn, 91 Cal. 133, 25 Pac. 970, 27 Pac. 537, 13 L. R. A. 336, 25 Am. St. Rep. 159; U. S. vs. Throckmorton, supra. If the latter part of the opinion in this case was intended to declare that such decrees may not be reviewed for extrinsic fraud in procuring them to be made, it must be considered as overruled by the decision in Sohler vs. Sohler, supra. In Mulcahey vs. Dow, 131 Cal. 73, 63

> Pac. 158, the opinion conceded that a distributee may, in a proper case, be held as an involuntary trustee, but decides that the fraud there shown was not extrinsic or collateral.' And see also, to the same effect, Goodrich vs. Ferris (Cal.) 145 Fed. 844."

Judge Morrow, in Goodrich v. Ferris, supra, in his discussion of the California cases, where the issues and contentions were similar to those herein, plainly and clearly supports the position taken by Judge Dietrich in dismissing appellants' bill of complaint.

APPELLANTS UNDER NO DISABILITY.

On pages 39 and 40 of their brief appellants have incorporated a copy of Section 4070 of Idaho Revised Codes. Just what bearing this section can have upon the case is not made plain as appellants have not shown themselves to be laboring under any of its provisions.

Subdivision 4 of this section is as follows:

> "A married woman, and her husband be a necessary party with her in commencing such action;
>
> "The time for such disability is not a part of the time limited for the commencement of the action."

That subdivision would not constitute any disability to appellants commencing their suit in the State of Idaho, as they could have very plainly shown to this court by quoting a subsequent section of Idaho Revised Codes, to-wit, Section 4093, which removes all disability from married women sueing and being sued and is as follows:

> "Sec. 4093. A woman may while married sue and be sued in the same manner as if she were single: Provided, That except in actions between husband and wife the husband shall not be chargeable in any manner with the wife's costs or other expenses of suit."

They labored under no statutory disability by reason of

their married relationship from bringing any action they might choose in the State of Idaho, and there is no Federal statute or rule of court which disqualified or disabled them from bringing this suit. They could have commenced it at any time since the date of the decree of distribution in August, 1909, as well as on the 29th day of March, 1917, so far as the question of their marital relations was involved. They cannot plead ignorance of said Section 4093, which has been in full force and effect since the early part of 1903, because at the time of the argument of the motion before the District Court, their counsel's attention was called to such section, as well as to the fact that a federal court of equity would not deny them the right to maintain their suit while married. Had their husbands at any time refused to join with them, under Rule 87 of the Old Federal Equity Rules, up to February 1, 1913, and subsequent thereto under Rule No 70 of the New Federal Equity Rules, they could each have proceeded with their suit by next friend appointed under the provisions of said rules.

See decision of Judge Ross in Wills v. Pauley, 51 Fed. 257.

IGNORANCE AND ILLITERACY NO EXCUSE.

In passing upon the allegation of the illiteracy of the appellants, on page 70 of the Record, Judge Dietrich said:

> "It is suggested that the plaintiffs are illiterate, but the fact is immaterial, for they did that which a person of the highest intelligence would have done; they sought advice from persons learned in the law."

A similar holding was made by Judge Ross in De Estrada v. San Felipe Land & Water Co., supra, found on page 282, as follows:

> "Nor is the fact that complainant is ignorant and unable to read or write of itself sufficient to bring into

action the aid of a court of equity in behalf of a claim and demand otherwise barred by lapse of time. Every one, not under legal disability, must assert his or her rights within the time prescribed by the rules of law or equity, as the case may be."

ABSENCE FROM THE STATE CANNOT AVAIL.

The absence of appellants from the State of Idaho cannot avail and in no manner constitutes an impediment to the commencement of their suit at an earlier date, and this is particularly true in view of their knowledge of the death of Corbett and their familiarity with the litigation commenced by their mother involving the questions of fraud charged herein.

Such an excuse was disposed of in Case of Broderick's Will, supra, on page 519, in the following language:

"They do not pretend that the facts of the fraud were shrouded in concealment, but their plea is that they lived in a remote and secluded region, far from means of information, and never heard of Broderick's death, or of the sale of his property, or of any events connected with the settlement of his estate, until many years after these events had transpired. Parties cannot thus, by their seclusion from the means of information, claim exemption from the laws that control human affairs, and set up a right to open up all the transactions of the past. The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings *in rem*.

LEGAL ADVICE RECEIVED BY APPELLANTS DID NOT CONSTITUTE EXCUSE OR IMPEDIMENT.

In disposing of their alleged excuse for not commencing their suit sooner on account of certain legal advice, Judge Dietrich said: (Record pages 68 and 69).

> "To overcome the presumption of laches, which they admit arises from the running of the period prescribed by the Idaho Statute, the only explanation they have to offer is that they repeatedly took legal advice in respect to their rights, and up to about the time the suit was commenced they were always informed that they were not the heirs of the deceased. But can such an excuse avail them here? In reason I think the better rule would be to regard the State Statute as absolutely binding in the premises."

If ignorance of the law or legal advice will toll the running of the statutes of limitations they would no longer be of any force and effect and could be abolished by similar allegations of professional advice as set forth in the present bill. Is it not quite possible that the advice received by appellants from their attorneys other than Mr. Jones was correct, and that he was wrong in his conclusions? It is the contention of appellees that if all the parties including the appellants and their mother had been before the Probate Court, the same decree of distribution would have been entered, and in support of this contention the following language of Judge Dietrich is submitted: (Record pages 61 and 62).

> "It is very plain from the diversity of advice given, and from the decisions of the Courts as set forth and explained in the bill, that if all the facts of kinship here exhibited by the bill had been before it, the Probate Court might, with much show of reason, have entered the decree now complained of. Under such conditions we ought not to consider as sufficient, and to entertain for any purpose, a charge of fraud so general and so barren of circumstantial detail."

The claim of appellants both in their bill and brief that the Supreme Court of Idaho held that Bridget Madden was not an heir of John Corbett, deceased, on account of her alienage is squarely disproven by the language of that court in its

decision referred to in the bill herein, to-wit, Connolly v. Reed, supra, as found on page 36 of such decision:

> "At common law aliens could not acquire property by descent. An alien at common law had no inheritable blood, and could not therefore claim through an intestate. (Norris v. Hoyt, 18 Cal. 217; 2 Cyc. 90-95, and notes). It became necessary, if aliens were to be allowed to take property in this state by succession, that the law-making power of the state should alter the common-law rule and declare the policy of the state in relation thereto. The legislature in the exercise of this power enacted sec. 5715, supra, and provided that aliens may take in all cases by succession as citizens, but qualified this provision with reference to non-resident aliens. In case a non-resident foreigner should claim by succession, he must 'appear and claim succession within five years after the death of the decedent to whom he claims succession.' The statute is definite and certain as to the date from which the five years begins to run. That date is the date of the death of the decedent."

An inexcusable and libelous attack has been made upon Lawrence F. Connolly in both the bill and brief of appellants that should receive consideration. It is inexcusable because the subject matter thereof is irrelevant and redundant and should not have been placed in their bill or brief. It is libelous because it is not true, as will appear from Connolly v. Probate Court, supra, and the records investigated by appellants and their counsel, Mr. Caleb Jones. (Record pages 23 and 24.)

Before discussing this attack it should be remembered that the bill is neither verified nor signed by the appellants, and in no manner involves the question of any purchase by Lawrence F. Connolly from Bridget Madden. The subject matter of this attack is found in Paragraph XXIX of the bill on pages 17 and 18 of the Record, where, on information and belief, it is alleged that after the death of John Corbett had be-

come known to appellants and their mother, Lawrence F. Connolly went to Ireland and by false and fraudulent representations as to the value of the estate of John Corbett, deceased, induced Bridget Madden, on or about the 1st day of April, 1911, to make an instrument conveying her interest in said estate to Lawrence F. Connolly.

Where appellants received their information on which to base this charge is not disclosed, but the records which they allege they and their attorney, Mr. Jones, investigated, and the decision of the Supreme Court, referred to in their bill, show that this charge is not true.

First, let the decision of the State Supreme Court speak for itself: (Connolly v. Probate Court, supra, on pages 52 and 53.)

> "It must be remembered that the record herein discloses that both the State of Idaho and Bridget Madden at all times had due and legal notice of the administration of the Corbett estate by the probate court of Kootenai county, with Lawrence F. Connolly as administrator; that as early as May, 1910, Bridget Madden had actual notice of those proceedings, and that one of her attorneys, in her amended petition, verified by him, alleged her actual notice of the value of the Corbett property on the 9th day of April, 1911, which date was the day preceding the execution of her deed and bill of sale of all her interest in said estate to Lawrence F. Connolly. Thus it appears that Bridget Madden had actual knowledge of the decree of distribution and of the value of said estate. She did not take any action in the probate court of Kootenai county until the 28th day of February, 1912—about two years and six months after the date of said decree of distribution, and more than a year after she had actual knowledge of the distribution of said estate. If the contentions of the respondent's counsel in this case prevail, a decree of distribution of

> the probate court would never become final and would have no final, binding force and effect. Such uncertainty in decrees of probate courts was not intended by the legislature in the enactment of the probate laws of this state."

Even if this were a case involving a cancellation of the deed and bill of sale by Bridget Madden to Lawrence F. Connolly, appellants would not be entitled to a rescission of the same since it appears that Bridget Madden, before the execution thereof was fully advised in the premises and had actual knowledge of the value of the property transferred. By referring to the records, which appellants and their attorney investigated, it will be seen that neither Lawrence F. Connolly nor his brothers nor sister ever heard of Bridget Madden or knew of her existence until some time in the late summer of 1910 and long after the date of the decree of distribution; that in April, 1899, said Connollys and their sister and said John Corbett, for a valuable consideration, entered into a contract whereby it was mutually agreed that at the death of said Corbett all his property should be equally divided among said Connollys and their sister, but in the event of the death of said Lawrence F. Connolly or John J. Connolly or William Connolly prior to that of said John Corbett, then the estate of such deceased Connolly was to be divided equally among John Corbett, the surviving Connollys and said Ellen Udell, and in the event of the death of more than one of said Connollys, then the estates of the deceased Connollys were to be divided equally among the living parties to the contract; that on the 6th day of April, 1911, in Clifton, Ireland, Lawrence F. Connolly had a conversation with one Henry Connolly, an attorney of said Bridget Madden, in which said Henry Connolly informed Lawrence F. Connolly that he had copies of all the proceedings

of the Probate Court in the estate of John Corbett, deceased; that on the evening of April 10, 1911, for a valuable consideration and in pursuance of an offer made to said Lawrence F. Connolly by said Bridget Madden, through her said attorney, Henry Connolly, and her son, Martin Madden, who were authorized by her to act for her in the matter of said offer, (which offer was accepted by said Lawrence F. Connolly,) said Bridget Madden, in the presence of said Lawrence F. Connolly, said Martin Madden and his wife, Margaret Madden, the father and mother of said Margaret Madden, the said attorney, Henry Connolly, and J. J. King, a commissioner of oaths, after being fully advised in the premises and having had each of the terms of a bill of sale and deed explained to her and having stated in the presence of all of them that she understood the same, made and executed a bill of sale and deed to said Lawrence F. Connolly conveying and transferring all her right, title, interest and claim in and to the said estate of John Corbett, deceased, and to the property of said estate, and on the 11th day of April, 1911, delivered said bill of sale and deed to said Lawrence F. Connolly, (which were the same deed and bill of sale mentioned in the above quotation from the decision of the Supreme Court of Idaho) and that neither Bridget Madden, nor any one in her behalf ever commenced any action or proceeding to rescind or cancel said bill of sale or deed, and that neither she, nor any one for or on her behalf ever returned to said Lawrence F. Connolly, or to either of his brothers or sister, or offered to return to them or any of them, the consideration paid her upon the execution of said bill of sale and deed.

On pages 56 and 57 of their brief, under the heading,

"Statutes do not apply until the discovery of the mistake," appellants have cited certain cases on the proposition of mistake which are in no manner or degree in point, and in none of which the statute of limitations was brought in question. They involved controversies between parties connected with the mistake. Appellants cannot bring their alleged mistake under the statute which bars a recovery after three years from the discovery of the fraud or mistake. Lawrence F. Connolly had no connection whatever with the legal advice which they received, and any mistake which their attorneys might have made in advising them is not an issue in this case. The issue herein is the alleged fraudulent conduct of Lawrence F. Connolly. He is not charged with deceiving them or with procuring for them any advice from any attorney or with placing any obstacle whatever in the way of their asserting any claim they might have had to the Corbett estate. They could not sue him for their mistake or for the mistakes of their attorneys; therefore, their mistake cannot be an issue herein and is not such a mistake as contemplated by the statute, and they cannot avoid the statute of limitations by pleading personal ignorance or mistake for which Lawrence F. Connolly was in no way responsible.

The statute says: "An action for relief on the ground of fraud or mistake" must be commenced within three years from "the discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

These appellants have no grievance against Lawrence F. Connolly for something he never did or caused to be done. If they are in any manner aggrieved on account of mistaken legal advice and have suffered any damage by reason thereof,

for which they would be entitled to maintain an action, their action is against the attorneys who advised them.

There is some discussion in appellants' brief as to excusing delay where parties remain in the same relative position, but such is not the case at bar. The property of the estate was long ago distributed and in so far as the record shows has passed beyond the control of the appellees. As Judge Dietrich has so aptly said, Lawrence F. Connolly might well act upon the assumption that after being drawn into court three times touching the probity of his conduct and the propriety of his claim to be one of the heirs of the deceased, he would be exempt from further harassment. (Record page 73).

By referring to Just v. Idaho Canal Co., 16 Idaho, 639, cited upon the proposition as to where laches should not apply under certain circumstances, it was not pointed out in appellants' brief that Judge Ailshie in that case made it very plain that the cause of action was not barred by the statute of limitations, and that what the court had to say upon the question of laches had reference to delays that did not amount to a bar of the statute.

In their second assignment of error, (Brief page 10) appellants complain of the refusal of the court to permit their so-called amendment to their bill. The court committed no error in this particular for the reason that the language sought to be inserted into their original bill did not constitute an amendment thereto or strengthen the original allegations thereof.

Paragraph XIX (Record page 12) sought to be amended commences with the statement that Lawrence F. Connolly as

administrator of the Corbett estate filed a petition, etc., in which he made certain representations. It is sought to amend this by stating that he made such representations as administrator of said estate, which is no amendment but merely a cumulative allegation that he did certain things as administrator. He is charged originally with making the representations with the intent to deceive the Probate Court and defraud appellants. They ask to add to this language that the representations were made knowing that the Connollys and their sister were not next of kin or heirs at law. This is not an amendment and is immaterial. The bill does not charge Lawrence F. Connolly with stating to the Probate Court that he or his brothers or sister were next of kin, and it appears in the bill that as cousins of John Corbett, deceased, they were, under the laws of Idaho, his heirs, and that Lawrence F. Connolly could not have known that they were not such heirs.

In no way could the adding of this new language have strengthened the appellants' case; in no way did it show any act or conduct on the part of Lawrence F. Connolly that had not been made a matter of record; in no way did it charge Lawrence F. Connolly with deceiving appellants or preventing them from asserting any claim they might have had to the Corbett estate, and in no way did it furnish an excuse for their delay.

In approaching the end of this brief it might not be inappropriate to direct the attention of appellants to the fact that harsh language and denunciation in their brief are as insufficient to constitute argument as are general charges of fraud to make a cause of action in their bill.

The court of last resort in Idaho has said that the Connolly

brothers and their sister were heirs of John Corbett, deceased, and entitled to succeed to his estate; that they were not guilty of any fraud in connection with the administration thereof; that the proceedings in the Probate Court that resulted in the distribution of said estate to them were legal and were notice to all the world, and it has twice issued its preemptory writ of prohibition prohibiting any interference with the decree of distribution which distributed to the Connolly brothers and their sister the Corbett estate.

Under the rule of decision of this Honorable Court and of the Supreme Court of the United States these appellants had notice and knowledge at all times of the probate proceedings, were guilty of laches, and their cause of action is barred by the statutes of limitations; therefore, these appellees respectfully submit that the judgment of the District Court dismissing the bill of complaint of appellants should be affirmed.

Respectfully submitted,

C. W. Beale

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Solicitor for Lawrence F. Connolly, administrator and individually, and John J. Connolly, appellees.

Residence and Post Office address, Wallace, Idaho.

Service of the above and foregoing brief admitted, accepted and received and a true copy of said brief received and accepted this 4 day of February, A. D. 1918.

Caleb Jones

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Solicitor for Appellants.